Supreme Court, U.S.
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No. 98-833

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

SAMUEL MADDEN HOMES TENANT COUNCIL,

Petitioners,

vs.

ALEXANDRIA RESIDENT COUNCIL, INC.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The petition accurately lists the parties to this petition for *writ of certiorari*. The Alexandria Resident Council, Inc. ("ARC") sued the Alexandria Redevelopment and Housing Authority ("ARHA"), and the Samuel Madden Homes Tenant Council ("SMHTC") intervened. Notably, although judgment was entered against ARHA, it has not joined SMHTC in seeking review by this Court.

The Alexandria Resident Council, Inc. ("ARC") has no parent company or nonwholly owned subsidiary company.

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STATEMENT OF THE CASE

On March 27, 1997, the Alexandria Resident Council, Inc. ("ARC"), sued the Alexandria Redevelopment and Housing Authority ("ARHA") to enforce its rights, under 42 U.S.C. § 1437p(b)(1) and under a written contract, to purchase public housing known as the Samuel Madden Homes (Downtown) (the "Downtown homes") that ARHA planned to demolish. (R.8). The Samuel Madden Homes Tenant Council ("SMHTC"), a newly formed group consisting of and representing five (*sic*) residents, intervened, claiming that it was entitled to the right to purchase. (R.40). ARC moved for summary judgment, asserting that for nearly a decade it had been the resident council of the downtown homes and that therefore it was entitled to receive the offer to purchase. ARC submitted declarations and extensive documentary evidence in support of its motion. (R.75-245) No declaration or admissible evidence was presented by either ARHA or SMHTC in their opposition to this motion. (R.246-271).

On September 24, 1997, the district court granted the motion for summary judgment, finding that, on the evidence before it, ARC was the resident council for the downtown homes, that ARC was therefore entitled to the statutory right to purchase, and that the Memorandum of Understanding ("MOU") between ARC and ARHA provided a secondary basis for the right to purchase. (A.41-42). ARHA and SMHTC appealed, and on July 22, 1998, the U.S. Court of Appeals for the Fourth Circuit affirmed the judgment. (A.1-19). SMHTC's petition for rehearing was denied on August 17, 1998. (A.21).

As set forth below, SMHTC has failed to demonstrate any basis for this Court to review the fact-bound determination that ARC was a resident council entitled to the right to purchase.

REASONS FOR DENYING THE WRIT

I.

THERE IS NO COMPELLING REASON FOR REVIEW BY THIS COURT.

The decisions by the district court and the United States Court of Appeals for the Fourth Circuit were both based on the uncontested facts set forth in ARC's motion for summary judgment. On a motion for summary judgment, the moving party has the initial burden of showing the absence of a material issue of fact, but once the motion is made and supported, the nonmoving party must produce evidence showing a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). Here, summary judgment was proper, given the failure by ARHA and SMHTC to produce any evidence to show a material issue of fact.

The only question for the district court was whether, based on the record before the court, ARC was a resident council of the downtown homes within the meaning of 24 C.F.R. § 964.115 (1998). In making this determination, the district court analyzed the evidence regarding how ARC was formed, how it had functioned for nearly a decade, and even how it had been treated by ARHA in the past. (A.31). In its *de novo* review of the decision granting summary judgment, the Court of Appeals for the Fourth Circuit performed a similar analysis of the record before concluding that ARC was a duly-formed resident council for the downtown homes. (A.18-19).

As the decision below turned primarily on findings of fact, there is no compelling reason for review by this Court. Nor does the petition present a conflict between any appellate courts for this Court to resolve. A Westlaw database search for all

federal or state court decisions citing 24 C.F.R. § 964.1 *et seq.* uncovered no relevant caselaw.[1] This search along with the extensive research by counsel for ARC indicate that no reported decision, federal or state, has addressed the issues raised in this case.

This petition by an organization with at most five members raises no important question of federal law to justify review by the Supreme Court.[2] The absence of any appellate decision addressing this obscure issue proves that it does not have national significance. The unpublished *per curiam* decision by the Court or Appeals for the Fourth Circuit has no precedential effect and is narrowly limited to the facts of this case. Based on all of these circumstances, where the decision is fact-bound and presents no conflicting appellate decisions, no important questions of federal law, and no significant precedent, the Court should deny the petition for a *writ of certiorari*.

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1. For example, in *Concerned Residents of Taylor-Wythe and Edna Correa v. New York City Housing Authority*, 1996 WL 452432 (S.D.N.Y.), the district court granted a preliminary injunction enjoining the New York City Housing Authority from prohibiting a group of residents from meeting at the community center in their development and found that the group had a right to meet in the community center under New York law even though the group was not the officially recognized resident council. The court rejected the housing authority's argument that permitting such an unofficial group to meet in the community room would be a recognition of a competing resident council in violation of 24 C.F.R. § 964.18(a)(7).

2. SMHTC was formed by five public housing residents of the 100 unit downtown homes who elected themselves as directors and officers of the organization. (R210-216).) As set forth in ARC's motion to show cause why the appeal should not be dismissed before the Court of Appeals for the Fourth Circuit Court, Ella Weeks Coleman, the president of SMHTC and one of its directors, has stated her support for ARC and her opposition to the appeal by SMHTC, leaving only four members of SMHTC opposed to ARC.

II.

THE PETITION HAS IDENTIFIED NO ERRONEOUS FINDINGS.

The Petition wrongly claims that the decision conflicts with clear Congressional intent in violation of *Chevron USA, Inc. v. National Resources Defense Council, Inc., et al.*, 467 U.S. 837 (1984). The U.S. Department of Housing and Urban Development ("HUD") is prohibited from approving an application to demolish or redevelop public housing unless the

> tenant councils . . . of the project or portion of the project covered by the application, if any, have been given appropriate opportunities to purchase the project or portion of the project covered by the application. . . .

42 U.S.C. § 1437p(b)(1) (1994). The regulations require a housing authority, such as ARHA, to make an offer of sale to the duly formed resident council at the affected site. 24 C.F.R. § 970.13(d) (1998).

Based on the facts before it, the court found that ARC was the resident council of the downtown homes and that ARC was therefore entitled to an opportunity to purchase. This finding is entirely consistent with the clear language of both the statute and the regulations. Nor did this finding conflict with any contrary interpretation by HUD. Indeed, the record contains no opinion from HUD as to whether or not ARC was a resident council or as to whether or not ARC was entitled to an opportunity to purchase. SMHTC argues that the decision conflicted with a HUD notice and an informal letter from HUD's Office of General Council[3] in that these documents indicate

3. No proper foundation for either the notice or the letter was ever established and neither was admitted into evidence of record. ARC raised (Cont'd)

that a "jurisdiction-wide council" is not entitled to a right to purchase. Even assuming, *arguendo*, that an authenticated HUD opinion about "jurisdiction-wide resident councils" had been properly admitted into evidence, it would not present any conflict because the district court specifically found, and the Court of Appeals specifically affirmed, that ARC was a "resident council" and not a "jurisdiction-wide resident council." These documents are, thus, not material to the decision in this case.

The petition raises a new challenge to the alternative basis for the decision. ARC's contractual rights under its Memorandum of Understanding ("MOU") were held to be a secondary basis for the judgment. SMHTC now argues for the first time that this reliance on contract rights contravenes the regulations. Besides being unfounded, this objection was not properly preserved for review, and in any event, involves issues of fact and Virginia law that make it ill-suited for consideration by this Court. The fact that it provided only a secondary basis for the decision demonstrates that it is not of sufficient importance, standing alone, to warrant review.

In short, the record contains no erroneous findings to justify review by the Court.

III.

THE PETITION SHOWS NO MISAPPLICATION OF LAW.

SMHTC argues that the decision impermissibly expanded the coverage and scope of 24 C.F.R. § 964.18(a)(7). That

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(Cont'd)
a timely objection to each. (R.272-275, 381-384). Further, the HUD letter was not even submitted to the district court upon the motion for summary judgment. (R.369-378). Therefore, neither document should be considered by this Court.

regulation prohibits HUD and any housing authority, such as ARHA, from recognizing "a competing resident council once a duly elected resident council has been established." The Court of Appeals for the Fourth Circuit properly found that, on the evidence before it, ARC had previously been established as a "duly elected resident counsel" and that therefore ARHA could not recognize a competing resident council, such as SMHTC.

The essential finding was that ARC was the resident council for the downtown homes. Nonetheless, SMHTC claims error, applying the tortured logic that the division of the regulations into parts means that each part must be construed independently. To be sure, the right to purchase is set forth in a separate part from the prohibition against recognizing a competing resident council. *Compare* 24 C.F.R. §970.13 (1998) *with* 24 C.F.R. § 964.18(a)(7) (1998). Simply because the public housing regulations are divided into different parts, SMHTC would limit the prohibition against recognizing competing resident councils to situations involving resident activities and not apply it to situations involving the right to purchase. This Court has long recognized that a section of a statute should not be read in isolation from the context of the whole Act. *Gustafson v. Alloyd Co., Inc.*, __ U.S. __, 115 S. Ct. 1061, 1067 (1995); *see also In re Public Bank of New York*, 278 U.S. 555 (1928).

Likewise, each part of the public housing regulations should be interpreted in the context of all of the parts that make up the entire body of regulations regarding public housing. SMHTC's suggested approach to regulatory construction would force the Court to view each part of the regulations in isolation. Even if this were a correct rule of regulatory construction, SMHTC has not shown how the misapplication of the rule merits the attention of this Court, when it was not essential to the decision and when it apparently has never been applied in any other reported decision. In sum, the petition presents no misapplication of law sufficient to merit review by this Court.

CONCLUSION

For the reasons given above, the petition should be denied.

Respectfully submitted,

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